IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RFA 118 of 2000.

Judgment reserved on 31.10.2007.

Date of decision 30th Nov., 2007.

New India Assurance Company …**Appellant.**

Versus

Shri Inder Singh …**Respondent.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellant **Mr. K.D.Sood, Advocate.**

For the Respondents: **Mr. YPS Dhaulta, Advocate.**

Dev Darshan Sud, J.

This is the defendants 'appeal against the judgment and decree of the learned District Judge decreeing the suit of the plaintiff for a sum of Rs.1,96,000/-, alongwith interest, for loss of income, wages of watchman etc. which the plaintiff pleaded he had suffered on account of loss of his truck which met with an accident and which was

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

insured with the defendant-appellant and which claim was rejected on the ground that the driver did not possess a valid driving licence.

Brief facts of the case which are not disputed are that the plaintiff had purchased truck No. HID 737 which was financed by the Punjab National Bank, Karsog. The truck was insured for a sum of Rs.2,21,000/- with the defendant for the period 1.9.1987 to 7.9.1988 and the insurance premium had been paid to the defendant/appellant. It is alleged by the plaintiff that on 28.8.1988 when the truck was being driven by Rajesh Kumar, PW-7, it met with an accident near Nirmund. FIR No. 59 of 1988 was registered with the police station. The plaintiff pleaded that the truck was a total loss and unfit for any kind of repair.

The defendants were notified about the accident and the total loss of the truck and were requested to pay the insured amount which was declined by them on the ground that the driver did not possess a valid driving licence. The plaintiff claimed the following sums as natural consequences ensuing from the loss of the truck:

" i) Interest from 28.8.1988

	to 19.8.1991	Rs.44,828.30
ii)	Loss in income from 1.10.1988 till the date of filing of the suit at the rate of Rs.3,500/- per month.	Rs.1,08,500.00
iii)	Wages of Chowkidar incurred by the applicant from Sept., 1988 to 3.5.1991	Rs.19,200.00
iv)	Expenses for taking out the truck	Rs.20,500.00
v)	Excess amount that is payable by the applicant to the Financier, Punjab National Bank according to the same bank inclusive of interest as on 19.8.1991.	Rs.44,829.00
	Total:	Rs.2,37,857.30
	Less Rs.25,000/-	Rs.25,000.00
	Balance amount due and payable by the defendants:	Rs.2,12,857.30

The learned trial Court framed six issues, crucial issue being issue No. 3 as to whether there has been a breach of the terms of the Policy. This issue was tried with issues 2, 3 and 4 to adjudicate

as to whether the defendants were right in repudiating the claim of the plaintiff and the quantum of entitlement of the plaintiff. Dealing with the issue of breach of the conditions of the insurance Policy, the pleading of the defendant-appellant was that PW-7 Rajesh Kumar was not authorized to drive a heavy motor vehicle as he did not possess a valid driving licence.

Learned counsel for the appellant – defendant submits that learned trial Court was in grave error in considering that Ex.PW-7/A which is the driving licence as a valid licence as it was never issued by the licensing authority at Shimla as claimed by PW-7. It was contended that the evidence of DW-1, who is the licensing clerk, is clear and unequivocal stating that license No. 674/83 (PW-7/A) which was claimed by driver Rajesh Kumar PW-7 as a valid license authorizing him to drive the accidented vehicle was not issued by the licensing authority at Shimla in the name of PW-7, but was issued in the name of one Lekh Ram Chandel, son of Shri Ramji Dass Chandel, resident of Kamla Niwas, Chhota Shimla. He has also drawn my attention to Ex.DXX which is a certificate issued by the

Registering and Licensing Authority, Theog, stating that license No. 674/83 (PW-7/A) has been renewed by Registering and Licensing Authority, Theog. He states that the license is in the name of Shri Lekh Ram Chandel, son of Shri Ramji Dass Chandel.

Learned counsel submits that in this view of the matter, learned trial Court was wrong in holding that the appellant – defendant would be liable to make good the loss suffered by the plaintiff – respondent, more especially when there was no valid driving licence in the name of the driver PW-7 Rajesh Kumar and that the truck was being driven in gross breach of the conditions of the insurance policy. Learned counsel submits that reliance placed by learned trial Court on the judgment of the Hon'ble Supreme Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and others (AIR 1987 SC 1184) is not correct as there is no evidence on record to show or suggest that the owner Inder Singh, PW-5, had, in any manner, inspected the licence and was satisfied that it was not forged or tampered with. He states that the mere statement of PW-7 that he is employed with the Block Development Office, Ani on the basis of the

same license cannot be accepted as the gospel truth as no corroborative evidence has been produced by the plaintiff to establish this fact on record. It is contended that the inferences drawn from the evidence on record by learned trial Court that the plaintiff was not at fault and that PW-7 was employed as a driver is not borne out from the record of the case.

Learned counsel appearing for the plaintiff- respondent submitted that appreciation of evidence by learned trial Court cannot be faulted with. He submits that combined reading of the evidence of PW-3 and PW-5 clearly establishes that the plaintiff had no inkling as to whether licence which had been issued and on the basis of which PW-7 was employed, was forged or fake.

Counsel for the appellant relies upon the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Laxmi Narain Dhut [(2007) 3 SCC 700] holding that:

> **"36. The inevitable conclusion therefore is that the decision in Swaran Singh's case (*National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297*) has no application**

to own damage cases. The effect of fake license has to be considered in the light of what has been stated by this Court in New India Assurance Co., Shimla v. Kamla and Ors. (2001 (4) SCC 342). Once the license is a fake one the renewal cannot take away the effect of fake license. It was observed in Kamla's case as follows: (SCC p. 347, para 12)

> **"12. As a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any Licensing Authority to "renew a driving licence issued under the provisions of this Act with effect from the date of its expiry". No Licensing Authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document**

showing that it contains a purported order of a statutory authority would ever remain counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine".

37. As noted above, the conceptual difference between third party right and own damage cases has to be kept in view. Initially, the burden is on the insurer to prove that the license was a fake one. Once it is established the natural consequences have to flow.

38. In view of the above analysis the following situations emerge:

1. **The decision in Swaran Singh's case has no application to cases other than third party risks.**
2. **Where originally the license was a fake one, renewal cannot cure the inherent fatality.**
3 **In case of third party risks the insurer has to indemnify the amount and if so advised to recover the same from the insured.**

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

The High Courts/Commissions shall now consider the matter afresh in the light of the position in law as delineated above."

He contended that in <u>New India Assurance Company, Shimla v.Kamla and others</u> [(2001) 4 SCC 342] it has been held that:

"(12) AS a point of law we have no manner of doubt that a fake licence cannot get its forgery outfit stripped off merely on account of some officer renewing the same with or without knowing it to be forged. Section 15 of the Act only empowers any licensing authority to "renew a driving license issued under the provisions of this Act with effect from the date of its expiry. " No licensing authority has the power to renew a fake licence and, therefore, a renewal if at all made cannot transform a fake licence as genuine. Any counterfeit document showing that it contains a purported order of a statutory authority would ever remain

> **counterfeit albeit the fact that other persons including some statutory authorities would have acted on the document unwittingly on the assumption that it is genuine."**

Learned counsel appearing for the respondent – plaintiff submits that the decision in *Skandia Insurance Co. Ltd. (supra)* squarely covers the case and the learned District Judge was right in relying upon this decision to hold that there being no deliberate act on the part of the plaintiff in concealment, the defendant was entitled to the amount claimed.

The judgment of the learned trial Court does not show that the learned District Judge has appreciated the facts on record. There is no evidence to suggest that the plaintiff had seen the driving license of the driver PW-7. The finding of the learned District Judge on this point is not supported by any evidence on record.

Reliance placed by the learned trial Court on the fact that PW-7 was employed as driver of the Block Development Officer, Ani for the last two years cannot be accepted. This fact should have been established by independent evidence namely by

production of the record from the office of the Block Development Officer, Ani and was not a fact to be proved by the oral testimony of this witness. When the statement of DW-1 is considered, it is clear that the license Ex.PW-7/A has not been issued either at Shimla or Theog. Ex.DXX also shows that driving license No. 674/83 was issued in the name of Shri Laiq Ram Chandel, son of Shri Ramji Dass Chandel, resident of Kamla Niwas, Chhota Shimla and that it was renewed on 19.5.1987. How this license could be treated as having been one issued in the name of PW-7 is not clear. This fact itself should have put the trial Court on guard and to insist on proof of employment of PW-7 Rajesh Kumar with the Block Development Officer, Ani with some documentary/ official record.

The judgment suffers from another infirmity and that is that the quantum of damages has not been established on record by the plaintiff. There is nothing to show as to how much loss has been suffered and the basis of such quantification. It is by now well settled that damages are to be proved by proof and not by mere wild guess work. The statements of the witnesses on record do not

show the quantum or extent of loss suffered by the plaintiff.

In the facts and circumstances of the case, this appeal is accepted and the judgment and decree of the District Judge is quashed and set aside. There shall be no order as to costs.

November 30, 2007(PC). (Dev Darshan Sud), J.